

House Bill 1014 (AS PASSED HOUSE AND SENATE)

By: Representatives Royal of the 171st, Keen of the 179th, Coleman of the 97th, Hembree of the 67th, and Forster of the 3rd

A BILL TO BE ENTITLED
AN ACT

To amend Titles 20 and 48 of the Official Code of Georgia Annotated, relating, respectively, to education and revenue and taxation, so as to revise and change certain provisions regarding the Georgia Higher Education Savings Plan; to change certain definitions; to change certain provisions regarding the purposes and creation of such plan; to change the authority of the board of directors of such plan; to change certain provisions regarding savings trust accounts; to change certain provisions regarding state income tax adjustments for contributions to or withdrawals from certain college savings programs; to change certain provisions regarding taxation of nonresidents' entire net income; to provide an effective date; to provide for applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 20 of the Official Code of Georgia Annotated, relating to education, is amended by revising paragraph (1) of Code Section 20-3-631, relating to purpose regarding the Georgia Higher Education Savings Plan, as follows:

"(1) Provide a program or programs of savings trust agreements to apply distributions toward qualified higher education expenses at eligible educational institutions, as defined in Section 529 of the Internal Revenue Code or other applicable federal law;"

SECTION 2.

Said title is further amended by revising paragraph (10) of Code Section 20-3-632, relating to definitions regarding the Georgia Higher Education Savings Plan, as follows:

"(10) 'Program' means ~~the~~ a program of savings trust agreements and savings trust accounts provided by the plan under Section 529 of the Internal Revenue Code or other applicable federal law."

SECTION 3.

Said title is further amended by revising paragraph (1) of subsection (a) of Code Section 20-3-633, relating to the creation of the Georgia Higher Education Savings Plan, as follows:

"(a)(1) There is created the Georgia Higher Education Savings Plan, as a body corporate and politic and an instrumentality of the state, for purposes of establishing and maintaining the Georgia Higher Education Savings Plan Trust Fund and qualified tuition programs under Section 529 of the Internal Revenue Code as provided by this article.

The plan shall be governed by a board of directors consisting of the Governor as chairperson, the Chancellor of the Board of Regents of the University System of Georgia, the commissioner of technical and adult education, the executive director of the Georgia Student Finance Commission, the state auditor, the director of the Office of Planning and Budget, the state revenue commissioner, three directors who shall be appointed by and serve at the pleasure of the Governor, and the director of the Office of Treasury and Fiscal Services who shall act as administrative officer of the board. A majority of the board shall constitute a quorum, and the acts of the majority shall be the acts of the board."

SECTION 4.

Said title is further amended by revising paragraphs (11) and (12) of subsection (b) of Code Section 20-3-633, relating to the board of directors of such plan, as follows:

"(11) Solicit proposals and contract for the marketing of the program, provided that any materials produced by a marketing contractor for the purpose of marketing the program must be approved by the board before being made available to the public, unless otherwise directed by the board, establish a name for the program, and adopt and use marketing names, brands, logos, or other descriptions or representations of the program as may be deemed desirable or convenient for promoting, publicizing, or otherwise marketing the program within this state, outside this state, or both;

(12) Delegate responsibility for administration of ~~the comprehensive investment plan~~ any program to a financial organization that the board determines is qualified;"

SECTION 5.

Said title is further amended by revising subsection (a) of Code Section 20-3-634, relating to savings trust accounts, as follows:

"(a) The plan, through one or more programs, shall make savings trust agreements and savings trust accounts available to the public, under which account owners or account contributors may make contributions on behalf of qualified beneficiaries. Contributions and investment earnings on the contributions may be used for any qualified higher

educational expenses of a designated beneficiary. The state shall not guarantee that such contributions, together with the investment return on such contributions, if any, will be adequate to pay for qualified education expenses in full. Savings trust agreements shall be available to both residents of the State of Georgia and nonresidents of the State of Georgia. One or more savings trust accounts may be established for any qualified beneficiary, subject to the limitations of this article."

SECTION 6.

Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is amended by revising subparagraph (D) of paragraph (11) of Code Section 48-7-1, relating to definitions regarding state income tax, as follows:

"(D) Every individual who is not a resident of this state for income tax purposes and who makes a withdrawal as provided for in ~~subparagraph (b)(10)(B)~~ paragraph (10) of subsection (b) of Code Section 48-7-27."

SECTION 7.

Said title is further amended in Code Section 48-7-27, relating to computation of taxable net income, by revising paragraphs (11) and (11.1) of subsection (a) as follows:

~~"(11)(A)~~ For taxable years beginning on or after January 1, 2002, and prior to January 1, 2007, ~~and:~~

(A) An amount equal to the amount of contributions by parents or guardians of a designated beneficiary to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary who is claimed as a dependent on the Georgia income tax return of the beneficiary's parents or guardians, but not exceeding \$2,000.00 per beneficiary;

(B) If the parents or guardians file joint returns, separate returns, or single returns, the sum of contributions constituting deductions on their returns under this paragraph shall not exceed \$2,000.00 per beneficiary;

(C) In order to claim the deduction for a taxable year:

(i) Such parent or guardian must have claimed and been allowed itemized deductions pursuant to Section 63(d) of the Internal Revenue Code of 1986 and paragraph (1) of this subsection;

(ii) The federal adjusted gross income for such taxable year cannot exceed \$100,000.00 for a joint return or \$50,000.00 for a separate or single return except as provided in subparagraph (D) of this paragraph; and

(iii) Such parent or guardian must be the account owner of the designated beneficiary's account;

(D) The maximum deduction authorized by this paragraph for each beneficiary shall decrease by \$400.00 for each \$1,000.00 of federal adjusted gross income over \$100,000.00 for a joint return or \$50,000.00 for a separate or single return; and

(E) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account pursuant to Section 219(f)(3) of the Internal Revenue Code of 1986;

(11.1)(A) For taxable years beginning on or after January 1, 2007, ~~an~~ an:

(A) An amount equal to the amount of contributions to a savings trust account established pursuant to Article 11 of Chapter 3 of Title 20 on behalf of the designated beneficiary, but not exceeding \$2,000.00 per beneficiary; and

(B) If the contributor files a ~~joint return~~, separate return; or single return, the sum of contributions constituting deductions on the contributor's ~~returns~~ return under this paragraph shall not exceed \$2,000.00 per ~~return~~ beneficiary;

(C) If the contributor files a joint return, the sum of contributions constituting deductions on the contributor's return under this paragraph shall not exceed \$2,000.00 per beneficiary; and

(D) For purposes of this paragraph, contributions or payments for any such taxable year may be made during or after such taxable year but on or before the deadline for making contributions to an individual retirement account under federal law for such taxable year;"

SECTION 8.

Said title is further amended in Code Section 48-7-27, relating to computation of taxable net income, by revising paragraph (10) of subsection (b) as follows:

~~"(10)(A) For taxable years beginning on or after January 1, 2002, the~~

(10)(A) Except as otherwise provided in subparagraph (C) of this paragraph, the amount of any qualified withdrawals from a savings trust account under Article 11 of Chapter 3 of Title 20 ~~used solely for qualified higher education expenses~~ shall not be subject to state income tax under this chapter; and

(B) For withdrawals other than qualified withdrawals from such a savings trust account, the proportion of earnings in the account balance at the time of the withdrawal shall be applied to the total funds withdrawn to determine the earnings portion to be included in the account owner's taxable net income in the year of withdrawal; and

(C) For withdrawals other than qualified withdrawals from such a savings trust account and for withdrawals from such a savings trust account which are rolled over to a qualified tuition program other than the qualified tuition program established under

1 Article 11 of Chapter 3 of Title 20, the The proportion of the contributions in an
2 account balance at the time of a withdrawal ~~other than for qualified higher education~~
3 ~~expenses~~ which previously have been used to reduce taxable net income pursuant to
4 ~~paragraph (11) of~~ subsection (a) of this Code section shall be applied to the nonearnings
5 portion of the total funds withdrawn to determine an amount to be included in the
6 account owner's taxable net income in the same taxable year."

7 **SECTION 9.**

8 Said title is further amended in Code Section 48-7-30, relating to taxation of nonresidents'
9 entire net income, by revising subsection (a) as follows:

10 "(a) The tax imposed by this chapter shall apply to the entire net income of a taxable
11 nonresident derived from employment, trade, business, professional, or other activity for
12 financial gain or profit performed or carried on within this state including, but not limited
13 to, the rental of real or personal property located within this state or for use within this
14 state, the sale, exchange, or other disposition of tangible or intangible property having a
15 situs in this state, the receipt of proceeds of any lottery prize awarded by the Georgia
16 Lottery Corporation, and withdrawals of contributions to a savings trust account under
17 Article 11 of Chapter 3 of Title 20 ~~other than for qualified higher education expenses which~~
18 are required to be included in taxable net income as provided in subparagraph (b)(10)(C)
19 ~~previously have been used to reduce taxable net income pursuant to paragraph (11) of~~
20 ~~subsection (a) of Code Section 48-7-27."~~

21 **SECTION 10.**

22 This Act shall become effective upon its approval by the Governor or upon its becoming law
23 without such approval and Sections 8 and 9 of this Act shall be applicable to all taxable years
24 beginning on or after January 1, 2008.

25 **SECTION 11.**

26 All laws and parts of laws in conflict with this Act are repealed.